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IN THE

Supreme Court of the United States

OCTOBER TERM,. 1973

No. 73-2020

REGINALD LEWIS,

Petitioner,

-against-

HUDSON WATERWAYS CORPORATION,

Respondent.

PETITIONER'S REPLY BRIEF

NATHAN BAKER
Counsel for Petitioner
1 Newark Street
Hoboken, N.J. 07030

HERBERT LEBOVICI
Of Counsel

Dick Bailey Printers • P.O. Box X, Staten Island, N.Y. 10302 • Tel.: (212) 447-5358

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Petitioner respectfully submits the following reply to the answering brief of the respondent herein.

I.

Points I and II of respondent's "ARGUMENT" relate to the setting aside of the jury verdict for earned wages directed by the Court and for statutory liquidated damages

awarded by the jury at the first trial. Recovery was also had at the first trial for personal injuries suffered by the petitioner but with respect to which there is no issue on this petition for *certiorari*. After the first trial without even a request for such relief in the Notice of Motion, the trial court set aside a directed verdict for the wages themselves. On motion papers to set aside the jury's verdict that the earned wages had been "unreasonably withheld", the respondent requested relief.

> " . . . setting aside the jury verdict on all the issues submitted to the jury [including a separate recovery for personal injuries] and enter judgment for defendant notwithstanding the verdict; or, *in the alternative for a new trial on all the issues submitted to the jury pursuant to Rule 59(a-1) of the Federal Rules of Civil Procedure* . . . " (Emphasis added)

The supporting affidavit for this Notice of Motion argued at great length the reasons for such relief with respect to the recovery for personal injuries had by the plaintiff, but added nothing of consequence to the boiler plate of the Notice of Motion that could indicate a reasoned basis for the lower court's order setting aside the jury's verdict that the wages were "unreasonably withheld".

The argument of the respondent therefore, that the "motion papers" provided the reasons adopted by the court for its action, amount to nothing more than a claim that the result may be achieved by fiat, or by counsel's label in the Notice of Motion.

The constitutional right to a jury trial is hardly preserved if it may be set aside upon no further showing than reference to a rule of procedure which may or may not be applicable (the rule referred to applied equally with respect to petitioner's recovery for personal injuries).

To support its argument, the respondent cites *Gilliland v. Lyons*, 278 F.2d 56, wherein it is stated that "as a general rule" the grounds for the motion may be obtained from the motion papers. But here the motion papers said nothing of consequence as grounds for setting aside the jury's verdict with respect to the statutory wage. Furthermore, in the *Gilliland* case the court was able to demonstrate the basis on which the lower court acted in affirming the decision of the lower court from the papers themselves, in a much narrower and different context. The situation there was entirely different from that here where no valid basis appears in the record for disturbing the jury's verdict.

The Constitution does not say " . . . no fact tried by a jury shall be otherwise re-examined . . . except by arbitrary judicial fiat . . . ".

The verdicts of the first trial should be re-instituted.

II

Assuming that the question of the second trial is reached, respondent's "ARGUMENT" at Point III of its opposing brief, is contrary to what it seeks to affirm. The

Court of appeals concedes that error was committed by the lower court (7a) but would hold the error harmless. Respondent still argues however that the ruling complained of was not erroneous and would justify the conduct of the trial on the basis of erroneously admitted evidence.

Respondent also admitted that the basis on which it defended the case was on the basis of claims of which it was not aware of until, allegedly, the occurrence of pre-trial discovery by it, approximately a year subsequent to the withholding of the wages. This contention completely ignores the principle established by case law and by 46 USCA 642 that the ground for withholding of wages earned by a seaman must be asserted by it at the time the seaman is discharged, rather than arising from the newly discovered contentions dredged up long after the fact.

III

THE VERDICTS OF THE FIRST TRIAL SHOULD BE RE-INSTITUTED, AND IN ANY EVENT, THE MATTER REMITTED TO THE LOWER COURT FOR NEW TRIAL PURSUANT TO THE RULING OF THIS COURT.

Respectfully submitted,

REGINALD LEWIS, Petitioner
By NATHAN BAKER
Counsel for Petitioner
1 Newark Street
Hoboken, N.J. 07030

HERBERT LEBOVICI
Of Counsel

Dated: New York, New York
August 21st, 1974